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152.

A true State of the Case concerning Sir EDMOND
TURNOR Kt. and GEORGE CAREW Esq;

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DEPENDING

Upon an especial Appeal, to the Judges Delegates,
with adjuncts from a Sentence pronounced against
them, and others in the Admiralty Court, at the
Instance of *Jacob Neitz, Andreas Vanden Bogaerd,
Michael Vander Plancken*, and others, Subjects of
the *King of Spain*.



He King of Great Britain; in the year 1665. having granted special Let-
ters of Reprieves, against the States General and their Subjects (for the
reasons therein contained) under the great Seal of England, unto the said
Sir Edmond Turnor, and George Carew; and their Assigns, to continue
effectually in force, until the sum of 15 1612 l. Sterling, should be recover-
ed, with Costs and Damages; wherein His Majesty, signified his Will and
Pleasure to be such. That all Judges, Officers, Ministers, and Subjects
of England, should be Ayding and Assisting therein; and to take care that
the said Letters Patents, and Commissions thereupon, should be favourably interpreted,
and construed in all respects, to the benefit and best advantage of Sir Edmond Turnor, and
George Carew, their Executors, Administrators and Assigns; as by an authentick Copy
of the said Letters Patents hereunto annexed appears.

At the importunity of several Persons interested, in the said Letters Patents, for whom
the said Turnor and Carew were nominated and intrusted. An Exemplification of the said Ori-
ginal grant; was delivered to one Captain Tyrence Birne, by the said George Carew to put
the same in Execution, according to the force and effect thereof, against the States General and
their Subjects. Whereupon the said Carew, only indorsed an appointment upon the back
side of the Exemplification in these words (viz) I the within named George Carew, do here-
by constitute, assign, and appoint Captain Tyrence Birne, Commander of the good Ship the
Royal; mentioning therein the burthen, number of Men, Guns, and time of victualling, to
do, and Execute all and every such Act, and thing as by him the said Birne may be done, Exe-
cuted and performed; by virtue of the said Letters Patents, In witness whereof, the said Carew
set his Hand and Seal. The said Captain Birne, promising to procure Sir Edmond Turnor to
sign the same, which the said Birne neglected to do.

In pursuance of the said single appointment, Captain Birne procured Jonathan Frost, and
other his part-owners, to set forth the said Ship to Sea; and consequently in or about the Month
of August 1666. near Portland Bay, He seized a Fly-boat, laden with Wine, Salt, &c. lately
named the *Godlive* of Bruggis, coming from France, and bound for Amsterdam; and carried
the said Fly-boat into the Harbour of Chichester, from whence he sent to Mr. Suckling
his Protector for a Commission to examine the Vasser and the Seamen, who confessed themselves
to be Hollanders born, the Ship Dutch built, and the goods consigned to Dutch-men. When
upon return of the said Commission from the chief Magistrates of Chichester; the Judge of
the Admiralty, pronounced that there was good cause of seizure, and condemned the pretended
claimers in the expenses; But in regard one Peter Gerrard claimed the Ship and Goods, for
the account of Jacob Neitz, and others, Burgers and Inhabitants of Bruggis in Flanders; an
Order of Court was made (the Goods being perishable) that both Ship and Goods should be
restored, upon Bail to abide the Sentence, upon hearing the cause; which the Claymer re-
fused to give, pretending, that before the Ship was taken into the Vice-Admiralls custody, or
Writers of the Customs House put upon her; that much Salt, Wine, and Saffron, was im-
beazelled. Whereupon they Arrested Captain Birne, by Writ out of the Admiralty for 1000 l.
damages, and committed him to the Marshalsey, who gave good and sufficient Bail by two
Citizens of London, to answer the said Action.

Afterwards

Afterwards the Ship and Goods, upon pretended Certificates from Bruggs; and new examinations, were restored by decree of the Court, and confirmed by the Lords Commissioners for Bruggs; and actually delivered accordingly. Then Mr. Franklyn Proctor for the pretended Claimers, Exhibited a Libel against Sir Edmond Turnor, George Carew, Captain Birne, and Jonathan Frost, without any discontinuance, or prosecution of the Action for 1000 l. against Birne, and framed an impertinent Sentence against Sir Edmond Turnor and George Carew (who were not Arrested, Cited, or Summoned to defend the said Cause) Tyrence Birne, and Jonathan Frost, for eighteen hundred pounds damages, through imbecilliments leakage and spoiling the Ship and Goods by lying, (although occasioned by the wilful default of the pretended owners) wherefore Sir Edmond Turnor and George Carew, appealed by themselves for a Nullity of the said Sentence as repugnant to Law, and of a dangerous consequence to the Subjects of England, if such practices should be brought into precedent.

That one Peter Victorine a person born in Amsterdam appeared for the pretended Claimers (after Peter Gerrard run away to avoid payment of the expences, and the charges of the Seamen at Chichester, which are yet unsatisfied) and continues in his malicious and various prosecutions against Turnor and Carew, notwithstanding there is no upon their own swearing, any the least proof against the said Turnor and Carew in all their examinations, (though of no Record, to make them chargeable or guilty of any imbecilliment, or so much as the knowledge of any of the said transactions mentioned in the said Sentence, from which they appealed to His Majesty in the High Court of Chancery, who appointed the same to be heard, and determined by the Right Honourable the Lord Chief Justice Rainsford, Judge Wild, Judge Windam, Wason Littleton, Sir Richard Loyde, Sir Timothy Baldwin, Sir Edward Lowe, Dr. Pinfold, Dr. Trumball, Dr. Digby, Dr. and Briggs, or a competent number of them, as by the said Commission unto them directed, under the great Seal of England appears.

Several Reasons and Arguments, why the said Sentence of 1800 l. ought to be reversed, made null and void against the said Sir Edmond Turnor, and George Carew.

It is alledged in the first Article of the pretended Libel against Sir Edmond Turnor, and George Carew, and also against Jonathan Frost, and Tyrence Birne, and it is so pronounced in the Sentence (from which the said Sir Edmond Turnor, and George Carew, by themselves appealed; especially for a Commission directed to several Judges of the Common Law, as Adjuncts with the ordinary Delegates, Civil Lawyers, unto which Doctors, Frost and Birne, appealed) that they were Owners, Freighters, or Insurers of the Ship *Royal*; whereof the said Tyrence Birne was Captain, and that they did Man, Equip, Victual, Furnish, and set the said Ship to Sea at their Costs and Charges, which is a gross mistake, Erronious, false and contrary to the truth of the matter, so far forth as concerneth the said Sir Edmond Turnor, and George Carew; neither is there any such thing proved, or any wayes deposed in the Admiralty Court in the said Process transmitted; wherefore (*Libellum non probatum secundum allegatum*) the Sentence is null and void, as erronious and unjust.

And in the following Articles of the said pretended Libell, it's alledged that Turnor and Carew ratified, allowed and confirmed the seizure of the Ship *Godilive* of Bruggs, and her Lading, and the disposal of the Goods taken out by Birne, and others, And the damnifying the rest of the Goods by lying; in regard, Frost and Birne proceeded to adjudication in the Admiralty, in the names of Sir Edmond Turnor and George Carew. Although neither of them, the said Turnor and Carew gave any such Order; or did at any time lay out any Money, or promise by way of contribution towards the prosecution thereof, for any Fees or Salaries to Advocates, Proctors, or Registers, who were employed in the said Process before Sentence; neither are any of these things made out in the proofs transmitted, *pro*
nt, &c.

3 Admitting that *Sir Edmond Turnor*, had also signed the Deputation to Captain *Birne*, whereby he might have seized any Ships, Goods, or Merchandizes belonging to the *States General* and their Subjects; Yet if he had taken, or seized any Ships or Goods, belonging to the Subjects of any other *Prince* or *State*, he had no Warrant or Authority from *Turnor* or *Carew* so to do, or to break bulk before Adjudication, or to do any thing beyond the force and effect of the Letters Patents, such Actions are personal injuries; and by the Law of *England*, no man shall suffer for the offence of another, and *Birne* himself was Arrested for it; and had taken upon him to defend it, and given in good Bail accordingly.

4. It is against the rules of all Justice, that any man should be condemned before he be heard; and how *Sir Edmond Turnor* and *George Carew* should make their defence upon any Action, or Libell against them, being not Arrested or Legally cited, or summoned to see such Libell admitted against them. Wherefore, such an Action, Proceedings and Sentence upon it, is void and null to all intents and purposes of the Law,

5. It appears upon the pretended claimer's own shewing throughout their whole Process transmitted, wherein so much Paper is spoiled, that the greatest damages were occasioned by delay of proceedings after the Capture; for which the said Claimers were condemned *in expensis retardati processus*, at the instance of *Birne* and *Irost*, that only Prosecuted in the names of *Turnor* and *Carew*. And it also appears in the proofs that the Embeazlements were done by particular persons in the Ports, Havens, and Rivers of *Chichester*, and *Pool*, within the Bodies of the Counties of *Sussex*, and *Dorset*, and ought to be tryed there according to the Common Laws and Statutes of *England*, by matter of Record; and those persons to be questioned only (by Action of *Trover*, or by *Information*) that did the wrong; there cannot be any president found, that ever any Admiral, Commissioner of the Peace, or any other Officer, or Minister whatsoever, who was neither *particeps Criminis nec Muneris*, was questioned for any thing done contrary to a Legal Warrant and Authority given or granted out by either of them; but that only the party offending was called to question for exceeding his Commission, or Authority.

In the 42 of Ed. III. it is enacted that no Man be put to answer, but by due Process, and matter of Record according to the old Law of the Land, and if any thing be done to the contrary, it shall be void in Law, and holden for Error.

In the 8. Ed. II. Tit. Coron. 399. It is no part of the Sea, where one Man may see the Land of both sides, and of any thing done there, the Country may have knowledge; whereby it appeareth, that things done there, are tryable by the Country; (that is by Jury) and consequently not in the Admirall Court.

In Ed. I. Tit. Avowry 191. A Replevin was brought in *Murfords Case*, for taking of a Ship on the Coast of *Scarborow* in the Sea, and for carrying the same into the County of *Northumberland*, *Berry Chief Justice* of the Common Pleas, adjudged when a taking is partly on the Sea, and partly in a River, the Common Law shall have Jurisdiction.

By the several Statutes in the 13 of R. 2. Cap. 3. and the 15. of R. 2. Cap. 5. and the 2. of H. 4 Cap. 11. wherein all the Subjects of *England* have an interest, it is enacted that the Court of the Admirall shall have no Jurisdiction, or to meddle with any thing done within the Realm, by Land or Water, within the bodies of any County of *England*. And there being grievous Complaints made in those days by the Commons of *England*, that the Court of Admiralty had incroached upon the Jurisdiction of the Common Law, to the intollerable grievance of the Subjects; it was enacted that any person finding himself grieved against the form of the Statutes, and the Common Law, shall have his Action pronounced upon the Case against him that pursues in the Admiralls Court, and shall recover his double damages against the pursuant; and the said pursuant shall incur the penalty of 10 l. to the King for the pursuit so made, if he be convicted thereof.

The seizure was adjudged Legal, upon several circumstances in the Case, the damages afterwards was through the default of the pretended Claimers: And the imbezilments being done by several persons within the bodies of the County of *Sussex* and *Dorset*, where the municipal Law of *England*, and not the Civil Law hath the Jurisdiction. It is positively against the Rights, Liberties, and Properties of the Subjects, that any such Sentence should be confirmed against *Sir Edmond Turnor* and *George Carew*.

As *Sir Edmond Turnor* and *George Carew*, do not take upon themselves to excuse Captain *Pirne* and *Jonathan Frost*, or the persons who are Bail for either; but leave them to the due course of Law: So the said *Turnor* and *Carew*, cannot but accuse the pretended Claimers, or owners of the Fly-bote and her Lading; for that the pretended Claimers and their Agents, persisted in their Practices, to defraud the King as they had done his Subjects, whereby they forfeited both Ship and Goods, upon two several offences against several Acts of Parliament, as by several Certificates under the Officers hands of the Custom-house and other Testimonials appears.

viz. After the Ship and Goods were restored, as belonging to the Subjects of the King of *Spain*, and ought to have gone for *Brugis* or *Ostend*. Yet they did contrary to the Act of Navigation, bring Ship and Goods to the port of *London*, (without Letters of Safe-conduct) and there deliver them, being of the growth of *France*, which was a forfeiture of both Ship and Goods by the Law. Secondly, The Wine, Salt, &c. were Entred as *English* Goods by an *English* Man that they had procured to Enter the same, to defraud the King of Forraigners duties, so they wanted not Common Claimers to make them first *Spanish*, and then *English*, for their purposes notwithstanding they were *Hollanders* Goods.

It is to be observed, that Sir Edward Turnor and George Carew, (in regard they did not respectively make the least defence in the said Cause, before the Sentence) have severally purged themselves upon Oath before a Master of Chancery, to confirm all that they have respectively alledged in their own defence, before the Judges, Delligates, which Affidavits ought to be read, and come in Issue, at the hearing and finall determination of the said Cause.

*Actum 12th. of
January 1677.*